

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TYSON BORING

Registered Nurse License No. **684597**

Respondent

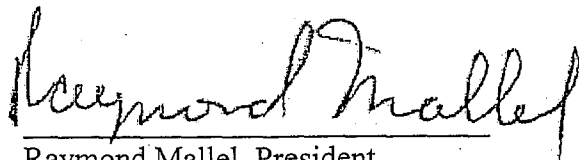
Case No. 2011-949

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **September 10, 2012.**

IT IS SO ORDERED **August 10, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LORETTA A. WEST
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 2011-949

14 **TYSON BORING**
15 **4512 Tonopah Avenue**
16 **San Diego, CA 92110**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 **Registered Nurse License No. 684597**

18 Respondent.

19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
21 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

25 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
26 Board of Registered Nursing. She brought this action solely in her official capacity and is
27 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
28 Loretta A. West, Deputy Attorney General.

1 2. Respondent Tyson Boring is represented in this proceeding by attorney Samuel
2 Spital, Esq., whose address is: 8880 Rio San Diego Drive, Ste 800, San Diego, CA 92108-1642

3 3. On or about July 26, 2006, the Board of Registered Nursing issued Registered Nurse
4 License No. 684597 to Tyson Boring (Respondent). The Registered Nurse License was in full
5 force and effect at all times relevant to the charges brought in Accusation No. 2011-949 and will
6 expire on April 30, 2014, unless renewed.

7 JURISDICTION

8 4. On May 31, 2011, Accusation No. 2011-949 was filed before the Board of Registered
9 Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent.
10 The Accusation and all other statutorily required documents were properly served on Respondent
11 on May 31, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

12 A copy of Accusation No. 2011-949 is attached as exhibit A and incorporated herein by
13 reference.

14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 2011-949. Respondent has also carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
18 Order.

19 6. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
21 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
22 to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2011-949.

4 9. Respondent agrees that his Registered Nurse License is subject to discipline and he
5 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 RESERVATION

7 10. The admissions made by Respondent herein are only for the purposes of this
8 proceeding, or any other proceedings in which the Board of Registered Nursing or other
9 professional licensing agency is involved, and shall not be admissible in any other criminal or
10 civil proceeding.

11 CONTINGENCY

12 11. This stipulation shall be subject to approval by the Board of Registered Nursing.
13 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
14 Registered Nursing may communicate directly with the Board regarding this stipulation and
15 settlement, without notice to or participation by Respondent or his counsel. By signing the
16 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
17 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
18 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
19 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
20 action between the parties, and the Board shall not be disqualified from further action by having
21 considered this matter.

22 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
23 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
24 effect as the originals.

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 684597 issued to Tyson Boring (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no

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1 more than 15 days of any address change and shall at all times maintain an active, current license
2 status with the Board, including during any period of suspension.

3 Upon successful completion of probation, Respondent's license shall be fully restored.

4 3. **Report in Person.** Respondent, during the period of probation, shall
5 appear in person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
7 or practice as a registered nurse outside of California shall not apply toward a reduction of this
8 probation time period. Respondent's probation is tolled, if and when he resides outside of
9 California. Respondent must provide written notice to the Board within 15 days of any change of
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where he has ever been licensed
13 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
14 information regarding the status of each license and any changes in such license status during the
15 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
16 license during the term of probation.

17 5. **Submit Written Reports.** Respondent, during the period of probation,
18 shall submit or cause to be submitted such written reports/declarations and verification of actions
19 under penalty of perjury, as required by the Board. These reports/declarations shall contain
20 statements relative to Respondent's compliance with all the conditions of the Board's Probation
21 Program. Respondent shall immediately execute all release of information forms as may be
22 required by the Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
24 state and territory in which he has a registered nurse license.

25 6. **Function as a Registered Nurse.** Respondent, during the period of
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24
27 hours per week for 6 consecutive months or as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered nursing"
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing
5 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of his good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 shall apply.

12 **7. Employment Approval and Reporting Requirements.** Respondent shall
13 obtain prior approval from the Board before commencing or continuing any employment, paid or
14 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
15 performance evaluations and other employment related reports as a registered nurse upon request
16 of the Board.

17 Respondent shall provide a copy of this Decision to his employer and immediate
18 supervisors prior to commencement of any nursing or other health care related employment.

19 In addition to the above, Respondent shall notify the Board in writing within seventy-two
20 (72) hours after he obtains any nursing or other health care related employment. Respondent
21 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
22 regardless of cause, from any nursing, or other health care related employment with a full
23 explanation of the circumstances surrounding the termination or separation.

24 **8. Supervision.** Respondent shall obtain prior approval from the Board
25 regarding Respondent's level of supervision and/or collaboration before commencing or
26 continuing any employment as a registered nurse, or education and training that includes patient
27 care.

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1 Respondent shall practice only under the direct supervision of a registered nurse in good
2 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
3 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
4 approved.

5 Respondent's level of supervision and/or collaboration may include, but is not limited to the
6 following:

7 (a) Maximum - The individual providing supervision and/or collaboration is present in
8 the patient care area or in any other work setting at all times.

9 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
10 care unit or in any other work setting at least half the hours Respondent works.

11 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
12 person communication with Respondent at least twice during each shift worked.

13 (d) Home Health Care - If Respondent is approved to work in the home health care
14 setting, the individual providing supervision and/or collaboration shall have person-to-person
15 communication with Respondent as required by the Board each work day. Respondent shall
16 maintain telephone or other telecommunication contact with the individual providing supervision
17 and/or collaboration as required by the Board during each work day. The individual providing
18 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
19 patients' homes visited by Respondent with or without Respondent present.

20 9. **Employment Limitations.** Respondent shall not work for a nurse's
21 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
22 traveling nurse, or for an in-house nursing pool.

23 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
24 registered nursing supervision and other protections for home visits have been approved by the
25 Board. Respondent shall not work in any other registered nursing occupation where home visits
26 are required.

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Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1009.00 (one thousand nine dollars). Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

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1 12. **Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
3 the stay order and impose the stayed discipline (revocation) of Respondent's license.

4 If during the period of probation, an accusation or petition to revoke probation has been
5 filed against Respondent's license or the Attorney General's Office has been requested to prepare
6 an accusation or petition to revoke probation against Respondent's license, the probationary
7 period shall automatically be extended and shall not expire until the accusation or petition has
8 been acted upon by the Board.

9 13. **License Surrender.** During Respondent's term of probation, if he ceases
10 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
11 probation, Respondent may surrender his license to the Board. The Board reserves the right to
12 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
13 take any other action deemed appropriate and reasonable under the circumstances, without further
14 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
15 longer be subject to the conditions of probation.

16 Surrender of Respondent's license shall be considered a disciplinary action and shall
17 become a part of Respondent's license history with the Board. A registered nurse whose license
18 has been surrendered may petition the Board for reinstatement no sooner than the following
19 minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any reason other
21 than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

23 14. **Physical Examination.** Within 45 days of the effective date of this
24 decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
25 physician assistant, who is approved by the Board before the assessment is performed, submit an
26 assessment of the Respondent's physical condition and capability to perform the duties of a
27 registered nurse, including a determination as set forth below in Condition 16, "A Rule-Out
28 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to

1 the Board. If medically determined, a recommended treatment program will be instituted and
2 followed by the Respondent with the physician, nurse practitioner, or physician assistant

3 providing written reports to the Board on forms provided by the Board. If Respondent is
4 determined to be unable to practice safely as a registered nurse, the licensed physician, nurse
5 practitioner, or physician assistant making this determination shall immediately notify the Board
6 and Respondent by telephone, and the Board shall request that the Attorney General's office
7 prepare an Accusation or Petition to Revoke Probation. Respondent shall immediately cease
8 practice and shall not resume practice until notified by the Board. During this period of
9 suspension, Respondent shall not engage in any practice for which a license issued by the Board
10 is required until the Board has notified Respondent that a medical determination permits
11 Respondent to resume practice. This period of suspension will not apply to the reduction of this
12 probationary time period.

13 If the Respondent fails to have the above assessment submitted to the Board within the
14 45-day requirement, Respondent shall immediately cease practice and shall not resume practice
15 until notified by the Board. This period of suspension will not apply to the reduction of this
16 probationary time period. The Board may waive or postpone this suspension only if significant,
17 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
18 by the Respondent to obtain the assessment, and a specific date for compliance must be provided.
19 Only one such waiver or extension may be permitted.

20 15. **Mental Health Examination.** The Respondent shall, within 45 days of
21 the effective date of this decision, have a mental health examination including psychological
22 testing as appropriate to determine his capability to perform the duties of a registered nurse,
23 including a determination as set forth below in Condition 16, "A Rule-Out Substance Abuse
24 Assessment." The examination will be performed by a psychiatrist, psychologist or other
25 licensed mental health practitioner approved by the Board. The examining mental health
26 practitioner will submit a written report of that assessment and recommendations to the Board.
27 All costs are the responsibility of the Respondent. Recommendations for treatment, therapy or
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1 counseling made as a result of the mental health examination will be instituted and followed by
2 the Respondent.

3 If Respondent is determined to be unable to practice safely as a registered nurse, the
4 licensed mental health care practitioner making this determination shall immediately notify the
5 Board and Respondent by telephone, and the Board shall request that the Attorney General's
6 office prepare an Accusation or Petition to Revoke Probation. Respondent shall immediately
7 cease practice and may not resume practice until notified by the Board. During this period of
8 suspension, Respondent shall not engage in any practice for which a license issued by the Board
9 is required, until the Board has notified Respondent that a mental health determination permits
10 Respondent to resume practice. This period of suspension will not apply to the reduction of this
11 probationary time period.

12 If the Respondent fails to have the above assessment submitted to the Board within the
13 45-day requirement, Respondent shall immediately cease practice and shall not resume practice
14 until notified by the Board. This period of suspension will not apply to the reduction of this
15 probationary time period. The Board may waive or postpone this suspension only if significant,
16 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
17 by the Respondent to obtain the assessment, and a specific date for compliance must be provided.
18 Only one such waiver or extension may be permitted.

19 16. **Rule-Out Substance Abuse Assessment.** If the examiner conducting the
20 physical and/or mental health examination determines that the Respondent is dependent upon
21 drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or
22 alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then
23 the Respondent must further comply with the following additional terms and conditions of
24 probation.

25 **A. Participate In Treatment/Rehabilitation Program For Alcohol**
26 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
27 period or shall have successfully completed prior to commencement of probation a Board-
28 approved treatment/rehabilitation program of at least six months duration. As required, reports

1 shall be submitted by the program on forms provided by the Board. If Respondent has not
2 completed a Board-approved treatment/rehabilitation program prior to commencement of

3 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
4 a program. If a program is not successfully completed within the first nine months of probation,
5 the Board shall consider Respondent in violation of probation.

6 Based on Board recommendation, each week Respondent shall be required to attend at
7 least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
8 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by
9 the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent
10 shall be added. Respondent shall submit dated and signed documentation confirming such
11 attendance to the Board during the entire period of probation. Respondent shall continue with the
12 recovery plan recommended by the treatment/rehabilitation program or a licensed mental health
13 examiner and/or other ongoing recovery groups.

14 **B. Abstain From Use Of Psychotropic (Mood-Altering) Drugs.** Respondent
15 shall completely abstain from the possession, injection or consumption by any route of all
16 psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a
17 health care professional legally authorized to do so as part of documented medical treatment.
18 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the
19 prescribing health professional, a report identifying the medication, dosage, the date the
20 medication was prescribed, the Respondent's prognosis, the date the medication will no longer be
21 required, and the effect on the recovery plan, if appropriate.

22 Respondent shall identify for the Board a single physician, nurse practitioner or physician
23 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
24 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
25 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
26 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
27 considered addictive have been prescribed, the report shall identify a program for the time limited
28 use of any such substances.

1 The Board may require the single coordinating physician, nurse practitioner, or
2 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
3 addictive medicine.

4 **C. Submit To Tests And Samples.** Respondent, at his expense, shall participate
5 in a random, biological fluid testing or a drug screening program which the Board approves. The
6 length of time and frequency will be subject to approval by the Board. The Respondent is
7 responsible for keeping the Board informed of Respondent's current telephone number at all
8 times. Respondent shall also ensure that messages may be left at the telephone number when he
9 is not available and ensure that reports are submitted directly by the testing agency to the Board,
10 as directed. Any confirmed positive finding shall be reported immediately to the Board by the
11 program and the respondent shall be considered in violation of probation.

12 In addition, Respondent, at any time during the period of probation, shall fully cooperate
13 with the Board or any of its representatives, and shall, when requested, submit to such tests and
14 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
15 hypnotics, dangerous drugs, or other controlled substances.

16 If Respondent has a positive drug screen for any substance not legally authorized and not
17 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
18 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
19 practice pending the final decision on the Petition to Revoke Probation or the Accusation. This
20 period of suspension will not apply to the reduction of this probationary time period.

21 If Respondent fails to participate in a random, biological fluid testing or drug screening
22 program within the specified time frame, the Respondent shall immediately cease practice and
23 shall not resume practice until notified by the Board. After taking into account documented
24 evidence of mitigation, if the Board files a Petition to Revoke Probation or an Accusation, the
25 Board may suspend Respondent from practice pending the final decision on the Petition to
26 Revoke Probation or the Accusation. This period of suspension will not apply to the reduction of
27 this probationary time period.

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1 **D. Therapy Or Counseling Program.** Respondent, at his expense, shall
2 participate in an on-going counseling program until such time as the Board releases him from this
3 requirement and only upon the recommendation of the counselor. Written progress reports from
4 the counselor will be required at various intervals. Within 45 days of the effective date of this
5 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
6 physician assistant, who is approved by the Board before the assessment is performed, submit an
7 assessment of the Respondent's physical condition and capability to perform the duties of a
8 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
9 medically determined, a recommended treatment program will be instituted and followed by the
10 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
11 to the Board on forms provided by the Board.

12 If Respondent is determined to be unable to practice safely as a registered nurse, the
13 licensed physician, nurse practitioner, or physician assistant making this determination shall
14 immediately notify the Board and Respondent by telephone, and the Board shall request that the
15 Attorney General's office prepare an Accusation or Petition to Revoke Probation. Respondent
16 shall immediately cease practice and shall not resume practice until notified by the Board.
17 During this period of suspension, Respondent shall not engage in any practice for which a license
18 issued by the Board is required until the Board has notified Respondent that a medical
19 determination permits Respondent to resume practice. This period of suspension will not apply to
20 the reduction of this probationary time period.

21 If Respondent fails to have the above assessment submitted to the Board within the 45-day
22 requirement, Respondent shall immediately cease practice and shall not resume practice until
23 notified by the Board. This period of suspension will not apply to the reduction of this
24 probationary time period. The Board may waive or postpone this suspension only if significant,
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts

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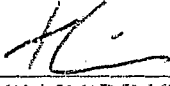
1 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
2 Only one such waiver or extension may be permitted.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, Samuel Spital, Esq. I understand the stipulation and the effect it
6 will have on my Registered Nurse License. I enter into this Stipulated Settlement and
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
8 Decision and Order of the Board of Registered Nursing.

9
10 DATED:

4/18/12

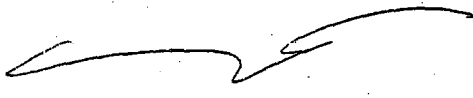


TYSON BORING
Respondent

12
13 I have read and fully discussed with Respondent Tyson Boring, my client, the terms and
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
15 I approve its form and content.

16 DATED:

4/19/12



SAMUEL SPITAL, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: March 26, 2012

Signed: April 24, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Loretta A. West
LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

SD2011800215

Exhibit A

Accusation No. 2011-949

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11 **STATE OF CALIFORNIA**

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13 **TYSON BORING**
4512 Tonopah Avenue
14 San Diego, CA 92110

A C C U S A T I O N

15 **Registered Nurse License No. 684597**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about July 26, 2006, the Board of Registered Nursing issued Registered Nurse
24 License Number 684597 to Tyson Boring (Respondent). The Registered Nurse License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
26 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
9 following:

10

11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

13

14 10. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning
16 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

17

18 (b) Use any controlled substance as defined in Division 10 (commencing with
19 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
20 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
22 or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
23 substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (July 12, 2010 Criminal Conviction for DUI on November 7, 2009)

3 14. Respondent has subjected his license to disciplinary action under sections 490 and
4 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
6 follows:

7 a. On or about July 12, 2010, in a criminal proceeding entitled *People of the State*
8 *of California v. Tyson Alan Boring*, in Imperial County Superior Court, case number BCM21868,
9 Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,
10 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a
11 misdemeanor. An additional count of violating Vehicle Code section 23152, subdivision (a),
12 driving under the influence of alcohol, was dismissed pursuant to a plea agreement.

13 b. As a result of the conviction, on or about July 12, 2010, Respondent was
14 sentenced to three years summary probation, ordered to complete an alcohol safety class and pay
15 \$1,638 in fees, fines, and restitution, and to comply with the terms of standard DUI probation.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

18 15. Respondent has subjected his registered nurse license to disciplinary action under
19 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about
20 November 7, 2009, Respondent used an alcoholic beverage to an extent or in a manner that was
21 potentially dangerous and injurious to himself, and to others in that he operated a motor vehicle
22 while impaired by alcohol.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct - Conviction of an Alcohol-Related Criminal Offense)

25 16. Respondent has subjected his registered nurse license to disciplinary action under
26 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about July 12,
27 2010, as described in paragraph 14, above, Respondent was convicted of a criminal offense
28 involving the consumption and/or self-administration of alcohol.

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3 **DISCIPLINARY CONSIDERATIONS**

4 17. To determine the degree of discipline, if any, to be imposed on Respondent,

5 Complainant alleges:

6 a. On or about July 29, 2002, in a prior criminal proceeding entitled *People of the*
7 *State of California v. Tyson Alan Boring*, in San Diego County Superior Court, case number
8 M859802, Respondent was convicted on his plea of no contest of violating Vehicle Code section
9 23152, subdivision (b), driving with a BAC of 0.08% or more, a misdemeanor. The court found
10 Respondent had a BAC of .18 percent. An additional count of violating Vehicle Code section
11 23152, subdivision (a), driving under the influence of alcohol, was dismissed pursuant to a plea
12 agreement.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Registered Nursing issue a decision:

16 1. Revoking or suspending Registered Nurse License Number 684597, issued to Tyson
17 Boring;

18 2. Ordering Tyson Boring to pay the Board of Registered Nursing the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 5/31/11

23 *Louise R. Bailey*
24 LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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